

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
THE GENERAL HOSPITAL)	
CORPORATION and DANA-FARBER)	
CANCER INSTITUTE, INC.)	
)	
Plaintiffs,)	
)	
v.)	C.A. NO. 1:18-CV-11360-IT
)	
ESOTERIX GENETIC LABORATORIES,)	
LLC and LABORATORY CORPORATION)	
OF AMERICA,)	
)	
Defendants.)	
_____)	

DEFENDANTS' MOTION TO DISMISS

Defendants Esoterix Genetic Laboratories, LLC (“EGL”) and Laboratory Corporation of America Holdings, incorrectly identified in Plaintiffs’ Complaint as Laboratory Corporation of America (“LabCorp”), hereby move to dismiss the claims asserted by Plaintiffs The General Hospital Corporation and Dana-Farber Cancer Institute, Inc. (collectively, “Plaintiffs”) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As grounds for their Motion, EGL and LabCorp state that Plaintiffs released their claims to the royalties at issue in connection with the settlement of a prior litigation, and therefore cannot claim a breach of contract based on a failure to pay those royalties. Plaintiffs’ remaining claims are barred for the same reason and/or because they are duplicative of Plaintiffs’ breach of contract claim or otherwise fail to state a claim for relief. Finally, Plaintiffs have not alleged any basis on which to impose liability against LabCorp, which is not a party to the License Agreement on which Plaintiffs base their claims.

As further grounds and also in support of their Motion, EGL and LabCorp incorporate their accompanying Memorandum of Law and supporting papers filed herewith.

WHEREFORE, for the reasons set forth above and in their accompanying Memorandum of Law and supporting papers filed herewith, EGL and LabCorp respectfully request that the Court grant their Motion and that Plaintiffs' claims against them be dismissed.

Respectfully submitted,

ESOTERIX GENETIC LABORATORIES,
LLC and LABORATORY
CORPORATION OF AMERICA

By their Attorneys,

CAMPBELL CAMPBELL EDWARDS &
CONROY, P.C.

/s/ Christopher R. Howe

James M. Campbell (BBO #541882)
jmcampbell@campbell-trial-lawyers.com
Christopher R. Howe (BBO #652445)
chowe@campbell-trial-lawyers.com
One Constitution Center, 3rd Floor
Boston, MA 02129
Tel: (617) 241-3000
Fax: (617) 241-5115

KELLEY DRYE & WARREN LLP
Robert I. Steiner (*pro hac vice* to be filed)
rsteiner@kelleydrye.com
Jaclyn M. Metzinger (*pro hac vice* to be filed)
jmetzinger@kelleydrye.com
101 Park Avenue
New York, NY 10178
Tel: (212) 808-7800
Fax: (212) 808-7897

LOCAL RULE 7.1(d) REQUEST FOR ORAL ARGUMENT

EGL and LabCorp respectfully request oral argument on their Motion pursuant to Local Rule 7.1(d) in order to assist the Court in resolving the issues raised.

LOCAL RULE 7.1(a)(2) CERTIFICATION

Counsel for EGL and LabCorp hereby certifies that he conferred with counsel for Plaintiffs, Carolyn A. Marcotte, regarding the issues raised in EGL/LabCorp's Motion pursuant to Rule 7.1(a)(2). Attorney Marcotte indicated that Plaintiffs oppose the Motion.

CERTIFICATE OF SERVICE

I, Christopher R. Howe, counsel for EGL and LabCorp, hereby certify that on July 5, 2018, the foregoing Motion to Dismiss was electronically filed with the Court using the Court's electronic filing system (ECF), which will send notice of such filing to all counsel of record. The foregoing document is also available for viewing and/or downloading from ECF. I also served a copy of the foregoing Motion to Dismiss by first class mail, postage pre-paid, on all parties of record.

/s/ Christopher R. Howe

Christopher R. Howe